

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

8 VIX TECHNOLOGY USA, Inc.,

9 Plaintiff,

10 v.

11 CENTRAL PUGET SOUND REGIONAL
12 TRANSIT AUTHORITY (dba SOUND
TRANSIT) and KEVIN WALLACE,

13 Defendants.

No. 18-2-19467-9

DECLARATION OF KATHERINE
GEORGE

14
15 I, Katherine George, declare as follows:

16 1. I am over the age of 18 and competent to testify. I make this declaration based on
17 my personal knowledge.

18 2. I am an attorney representing Kevin Wallace, the public records requester named as
19 a defendant in this case.

20 3. Attached as Exhibit A are true and correct copies of two documents downloaded
21 from the Sound Transit Web site: Sound Transit Motion No. M2008-17, explaining the contract
22 with Vix Technology (formerly ERG Transit Systems); and a staff report for Sound Transit Motion
23 No. 2014-28, explaining the contractor's change of name and ongoing payments under the contract.

24 4. Attached as Exhibit B is a true and correct copy of Sound Transit Motion No.

1 M2003-24, downloaded from the Sound Transit Web site, which states that only one firm was
2 qualified to develop and maintain the regional fare system.

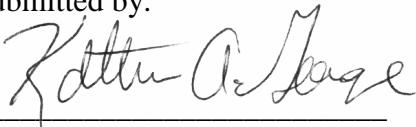
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4 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
5 true and correct.

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7 DATED this 31st day of August 2018, at Seattle, Washington.

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Katherine George

Submitted by:


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EXHIBIT A

SOUND TRANSIT

MOTION NO. M2008-17

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a contract change order under an existing contract with ERG Transit Systems (USA) Inc to provide added functionality for smart card dispensing and multiple product purchases from Sound Transit's Ticket Vending Machines, in the amount \$215,000 with a contingency of \$22,000 totaling \$237,000, for a new total authorized amount not to exceed \$6,881,931. This change order amount is for Sound Transit's capital expense share under the seven-agency Smart Card vendor contract, which will total \$38,975,760 for vendor capital expenses authorized for all seven agencies and an estimated \$67.7 million for capital and ten-year operations and maintenance for all seven agencies.

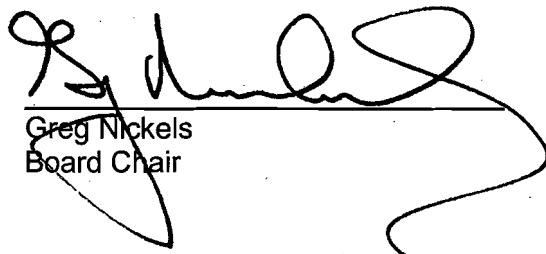
Background:

In 2003, ERG Transit Systems (USA) Inc., a California corporation, and wholly owned subsidiary of ERG, Ltd., an Australian corporation, was awarded a contract to deliver a regional smart card fare collection system to seven partner transit agencies in the Central Puget Sound Regional Fare Coordination Project. Sound Transit executed the Contract for the Development, Implementation, Operation, and Maintenance of the Central Puget Sound Regional Fare Coordination System in 2003 along with the other agencies, including Community Transit, Everett Transit, King County Metro, Kitsap Transit, Pierce Transit, and Washington State Ferries. This contract includes \$108,000 for the purchase of smart card readers to be installed in Sound Transit's existing Sounder TVMs. The ERG contract did not include support for the TVMs to dispense smart cards to customers, but only to use TVMs to load value onto smart cards already held by customers. The contract also did not provide for the purchase of more than one product (pass or stored-value load) in a single customer purchase transaction session. Therefore, is necessary to provide a contract change order to provide for these functions. This change order will increase Sound Transit's capital expense share under this seven-agency Smart Card vendor contract to an authorized amount not to exceed \$4,169,077.

Motion:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a change order to the the Contract for the Development, Implementation, Operation, and Maintenance of the Central Puget Sound Regional Fare Coordination System with ERG Transit Systems (USA) Inc.to provide added functionality for smart card dispensing and multiple product purchases from Sound Transit's Ticket Vending Machines, in the amount \$215,000 with a contingency of \$22,000 totaling \$237,000, for a new total authorized amount not to exceed \$6,881,931. This change order amount is for Sound Transit's capital expense share under the seven-agency Smart Card vendor contract, which will total \$38,975,760 for vendor capital expenses authorized for all seven agencies and an estimated \$67.7 million for capital and ten-year operations and maintenance for all seven agencies.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on February 14, 2008.



Greg Nickels
Board Chair

ATTEST:



Marcia Walker

Marcia Walker
Board Administrator

MOTION NO. M2014-28

Actions relating to the ORCA Program Interlocal Agreement and Vendor Contract

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Board	04/24/2014	Final Action	Brian McCartan, Executive Director of Finance and Information Technology Lynn Horton, ORCA Site Administrator

PROPOSED ACTION

1. Confirms authorization of payment of shared expenses related to the Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System (ILA) based on the annual amount approved by the Sound Transit Board through adoption of the annual budget;
2. Authorizes the chief executive officer to use the remaining amount of the ERG/Vix contract of \$4,384,016 for Sound Transit specific expenditures that are not paid through the ILA; and
3. Confirms the chief executive officer's authority to serve as a member of the Joint Administrative Board created under the ILA.

KEY FEATURES SUMMARY

- In 2003, the Board authorized the chief executive officer to enter into an Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System (ILA) with King County Metro, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit, and Washington State Ferries. The ILA created the framework for a fare collection system and provided for the administration and oversight of the operation and payment of the agencies' shared costs. The system is now known as ORCA.
- Under the ILA, regional costs are shared among the agencies. In 2009, a restated and amended ILA was executed to update the agreement for the operating phase of the ORCA project. Since 2009, Sound Transit's share of the regional expenses under the ERG/Vix contract has been approved by the Board through adoption of the annual budgets.
- This action confirms authorization of payment of shared expenses based on the annual amount approved by the Sound Transit Board through adoption of the annual budget.
- Motion No. M2003-24 authorized execution of a contract with ERG Transit Systems (ERG) to design, implement, and operate a regional based fare collection and processing system and authorized an amount not to exceed \$6,644,931 for Sound Transit's share of the vendor services. In 2011 ERG's name was changed to Vix Technology. Vix Technology is continuing to do work under the contract.
- This action authorizes the chief executive officer to use the remaining \$4,384,016 in the contract for Sound Transit agency-specific costs that are not paid through the ILA. Agency-specific costs include new equipment for Sound Transit's system expansion, system modifications specific to Sound Transit operations, and repairs or maintenance of Sound Transit devices.
- This action also confirms the chief executive officer's actions as a member of the Joint Board while administering and overseeing the ORCA project under the ILA.

BACKGROUND

On April 24, 2003, the Sound Transit Board approved two actions related to the Smart Card project (now known as ORCA). Motion No. M2003-25 authorized an ILA between Sound Transit, King County Metro, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit, and Washington State Ferries. The ILA created the framework for a fare collection system and provided for the administration and oversight of the operation and payment of the agencies' shared costs. The ILA established a Joint Administrative Board (Joint Board), consisting of Sound Transit's chief executive officer and the general managers of each participating agency to provide oversight and administration. Annually, the Joint Board, with the Sound Transit chief executive officer participating, adopts an annual budget of regionally shared costs.

In 2008, the Board authorized a contract change order under the ERG/Vix contract in the amount of \$237,000 for the vendor to provide added ORCA functionality for Sound Transit ticket vending machines. The total amount was increased to \$6,881,931.

From 2003 to 2009, the regional shared operational support services costs and Sound Transit specific costs under the ERG/Vix contract have been charged against Sound Transit's share of the vendor services. Since 2009, Sound Transit's share of the regional expenses of the ILA and the ERG/Vix contract have been included in an annual budget submitted to the Sound Transit Board for adoption. Expenses budgeted under the ILA have included operations and maintenance expenses set forth in the ERG/Vix contract, regionally shared expenses of the participating agencies, regional shared operational support services provided by Sound Transit and King County Metro, and local retailers selling ORCA products. The regional support services provided by Sound Transit and King County Metro include the regional program administration, the fiscal agent duties, ORCA operations, the mail center and the regional distribution and inventory center. Expenses are allocated to each agency under the ILA based on an annual proportionate operating share calculated based on each agencies' ridership from the previous year. All Sound Transit expenditures have been within Sound Transit Board adopted budgets.

In February 2009, the Sound Transit Board approved Motion No. M2009-16 authorizing execution of a restated and amended ILA to update the agreement for the operating phase of the ORCA project to further define the agencies' responsibilities during the operations period after full system acceptance. Sound Transit's share of the regionally shared costs has continued to grow due to the increase in ridership and is currently 19.39%, up from the original estimate in 2003 of 7.6%. Sound Transit's ridership has increased as a result of service expansions and the reduction in service by Sound Transit's partner agencies.

FISCAL INFORMATION

The actions described above explain and reaffirm the contract spending regarding the expenses associated with the ORCA project, including the ERG/Vix contract. All ORCA related expenditures to date have been within Board-approved levels.

Additionally, this action authorizes the chief executive officer to use the remaining amount of the ERG/Vix contract of \$4,384,016 for Sound Transit specific use in future purchases under the ERG/Vix contract, which expires in 2021. Below is displayed the \$778,785 of future expected expenditures for 2014-2016 and where the funding lies to cover these expenditures.

There is sufficient budget to cover the 2014 operating expenses. Future year expenses will be included in subsequent annual budgets submitted to the Board for adoption.

Action Item: VIX Contract

Contract Spending Plan	Total Contract Authority	Total Committed	Estimated Expenditures 2014-2016			Revised Uncommitted Contract Authority
			Estimated 2014 Expenditures	Estimated 2015-2016 Expenditures	Total Estimated Expenditures	
VIX Technology Inc.		2,129	147	235	382	
Operating Expenses		369	386	11	397	
Capital Expenditures						
Total Contract	6,882	2,498	532	246	779	3,605
Service Delivery Fare Collection Costs Budget			Remaining 2014 Budget			
Adopted 2014 Budget	Spent and Committed to date in 2014		Estimated 2014 Expenses	Estimated 2015-2016 Expenses	Total Estimated Expenses	
ORCA Operating Expense	1,801	282	147	235	382	1,372
Other Fare Collection Costs	1,387	46			-	1,341
Total Operating Expenses	3,188	328	147	235	382	2,713
TOTAL Construction Phase			Committed to Date (including Contingencies)		Estimated Expenditures 2014-2016	Committed Plus Action Uncommitted/ (Shortfall)
2014 TIP						
University Link	1,158,183	969,568	222	969,790	188,393	
South 20th Link Ext	283,818	225,168	72	225,240	58,578	
Tacoma Link Fare Collection	447	-	92	92	355	
Fare Administration	20,611	734	11	745	19,866	
Total Capital Costs	1,463,059	1,195,470	397	1,195,867	267,192	

Notes:

Amounts are expressed in Year of Expenditure \$1000s.

Committed to Date amounts are as of Feb 28, 2014 and include authorized contingencies.

Operating Expenses in subsequent years will be included in those future annual budgets for approval.

Project budgets are located on pages 34, 37, 98 and 108 of 198 of the 2014 Proposed Transit Improvement Plan.

SMALL BUSINESS/DBE PARTICIPATION AND APPRENTICESHIP UTILIZATION

Participation by Small Businesses and Disadvantaged Business Enterprises (DBEs)

This contract was procured by King County in 2003 and no Small Business or Disadvantaged Business Enterprise goals were applicable or established relative to this procurement. Consequently, Small Business and DBE participation is not applicable.

Apprenticeship Utilization

Not applicable to this action.

PUBLIC INVOLVEMENT

Not applicable to this action.

TIME CONSTRAINTS

Approval is needed as soon as possible to clarify the authority to pay for agency specific purchases under the ERG/Vix contract.

PRIOR BOARD/COMMITTEE ACTIONS

Motion No. M2009-16: Authorizing the chief executive officer to execute a restated and amended interlocal agreement for the Smart Card project with Community Transit, Everett Transit, Kitsap Transit, King County Metro Transit, Pierce Transit, and Washington State Ferries to update the agreement for the operating phase to further define the agencies' responsibilities during the operations period.

Motion No. M2008-17: Authorized the chief executive officer to execute a contract change order under an existing contract with ERG Transit Systems (USA) Inc. to provide added functionality for smart card dispensing and multiple product purchases from Sound Transit's Ticket Vending Machines, in the amount \$215,000 with a contingency of \$22,000 totaling \$237,000, for a new total authorized amount not to exceed \$6,881,931. This change order amount is for Sound Transit's capital expense share under the seven-agency Smart Card vendor contract.

Motion No. M2007-127: Authorizing the chief executive officer to execute an amendment to the Regional Pass and Fare Reconciliation Program Agreement with Community Transit, Everett Transit, King County Metro and Pierce Transit for regional fare media acceptance and reconciliation of Puget Pass revenues to add three additional one-year optional extension periods to the agreement term.

Motion No. M2003-24: Authorized the Executive Director to execute a contract with ERG Transit Systems (USA) Inc., a California corporation and wholly-owned subsidiary of ERG Limited, an Australian systems integration and transit fare collection equipment vendor, to design, implement and operate a regional Smart Card-based fare collection and revenue processing system for Central Puget Sound transit agencies. This contract would include \$3,279,008 for system design and implementation and all equipment, plus \$2,712,854 in payments for operations and maintenance of the system through 2014, and an 11% contingency amount of \$653,069, for a total authorized contract amount of \$6,644,931. (ERG changed its name to Vix Technology in 2011.)

Motion No. M2003-25: Authorized the Executive Director to execute an interlocal agreement regarding the Smart Card project with partner transit agencies, which may include Community Transit, Everett Transit, Kitsap Transit, King County Metro, Pierce Transit, and Washington State Ferries.

Motion No. M2003-26: Authorized the Executive Director to allocate funding from the Regional Fund/Fare Integration Fund budget to provide Smart Card project funding for Sound Transit implementation and operations; to provide funding support to Community Transit, Everett Transit, and Pierce Transit; and to renegotiate the Regional Pass and Fare Reconciliation Program Agreement to reduce and sunset Sound Transit's participation in the Puget Pass program and obligation to subsidize intersystem transfers.

ENVIRONMENTAL REVIEW

JI 4/21/2014

LEGAL REVIEW

BN 4-21-14

MOTION NO. M2014-28

A motion of the Board of the Central Puget Sound Regional Transit Authority (1) confirming authorization of payment of shared expenses related to the Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System (ILA) based on the annual amount approved by the Sound Transit Board through adoption of the annual budget; (2) authorizing the chief executive officer to use the remaining amount of the ERG/Vix contract of \$4,384,016 for Sound Transit specific expenditures that are not paid through the ILA; and (3) confirming the chief executive officer's authority to serve as a member of the Joint Administrative Board created under the ILA.

BACKGROUND:

On April 24, 2003, the Sound Transit Board approved two actions related to the Smart Card project (now known as ORCA). Motion No. M2003-25 authorized an ILA between Sound Transit, King County Metro, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit, and Washington State Ferries. The ILA created the framework for a fare collection system and provided for the administration and oversight of the operation and payment of the agencies' shared costs. The ILA established a Joint Administrative Board (Joint Board), consisting of Sound Transit's chief executive officer and the general managers of each participating agency to provide oversight and administration. Annually, the Joint Board, with the Sound Transit chief executive officer participating, adopts an annual budget of regionally shared costs.

In 2008, the Board authorized a contract change order under the ERG/Vix contract in the amount of \$237,000 for the vendor to provide added ORCA functionality for Sound Transit ticket vending machines. The total amount was increased to \$6,881,931.

From 2003 to 2009, the regional shared operational support services costs and Sound Transit specific costs under the ERG/Vix contract have been charged against Sound Transit's share of the vendor services. Since 2009, Sound Transit's share of the regional expenses of the ILA and the ERG/Vix contract have been included in an annual budget submitted to the Sound Transit Board for adoption. Expenses budgeted under the ILA have included operations and maintenance expenses set forth in the ERG/Vix contract, regionally shared expenses of the participating agencies, regional shared operational support services provided by Sound Transit and King County Metro, and local retailers selling ORCA products. The regional support services provided by Sound Transit and King County Metro include the regional program administration, the fiscal agent duties, ORCA operations, the mail center and the regional distribution and inventory center. Expenses are allocated to each agency under the ILA based on an annual proportionate operating share calculated based on each agencies' ridership from the previous year. All Sound Transit expenditures have been within Sound Transit Board adopted budgets.

In February 2009, the Sound Transit Board approved Motion No. M2009-16 authorizing execution of a restated and amended ILA to update the agreement for the operating phase of the ORCA project to further define the agencies' responsibilities during the operations period after full system acceptance. Sound Transit's share of the regionally shared costs has continued to grow due to the increase in ridership and is currently 19.39%, up from the original estimate in 2003 of 7.6%. Sound Transit's ridership has increased as a result of service expansions and the reduction in service by Sound Transit's partner agencies.

This action confirms authorization of payment of shared expenses based on the annual amount approved by the Sound Transit Board through adoption of the annual budget and authorizes the chief executive officer to use the remaining \$4,384,016 in the contract for Sound Transit agency-specific costs that are not paid through the ILA. Agency-specific costs include new equipment for Sound Transit's system expansion, system modifications specific to Sound Transit operations, and repairs or maintenance of Sound Transit devices. Sound Transit plans to expend \$778,785 for Sound Transit specific uses under the ERG/Vix contract in 2014-2016.

This action also confirms the chief executive officer's actions as a member of the Joint Board while administering and overseeing the ORCA project under the ILA.

MOTION:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that (1) authorization of payment of shared expenses related to the Interlocal Cooperation Agreement for the Design, Implementation, Operation and Maintenance of the Regional Fare Coordination System (ILA) is confirmed based on the annual amount approved by the Sound Transit Board through adoption of the annual budget; (2) the chief executive officer is authorized to use the remaining amount of the ERG/Vix contract of \$4,384,016 for Sound Transit specific expenditures that are not paid through the ILA; and (3) the chief executive officer's authority to serve as a member of the Joint Administrative Board created under the ILA is confirmed.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on April 24, 2014.



Dow Constantine
Board Chair

ATTEST:



Marcia Walker
Board Administrator

EXHIBIT B

SOUND TRANSIT

MOTION NO. M2003-24

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Executive Director to execute a contract with ERG Transit Systems (USA) Inc., a California corporation and wholly-owned subsidiary of ERG Limited, an Australian systems integration and transit fare collection equipment vendor, to design, implement and operate a regional Smart Card-based fare collection and revenue processing system for Central Puget Sound transit agencies. This contract would include \$3,279,008 for system design and implementation and all equipment, plus \$2,712,854 in payments for operations and maintenance of the system through 2014, and an 11% contingency amount of \$653,069, for a total authorized contract amount of \$6,644,931.

Background:

King County Metro, Community Transit, Everett Transit, Kitsap Transit, Pierce Transit, and Washington State Ferries along with the Puget Sound Regional Council formally initiated the Smart Card project in 1994. Following Sound Transit's successful vote in 1996, it also joined this partnership, as the goals of the project mirrored the Sound Move promise to provide a "one-ticket ride." The partnership's 1999 RFP process yielded two responses. A Project Evaluation Team was established to review and rate each of the firms. Based upon the review it was determined that only one firm, ERG Transit Systems (USA) Inc., a California corporation and wholly-owned subsidiary of ERG Limited (ERG, Ltd.), met the RFP requirements and was selected for further consideration. After a temporary suspension to the procurement to address issues resulting from I-695, a best and final offer was requested and a submittal was received from ERG, Ltd. in July 2002. The proposal has been negotiated to final pricing and performance terms and agreement has been reached for the basic structure and language of a proposed interlocal agreement among the partner transit agencies.

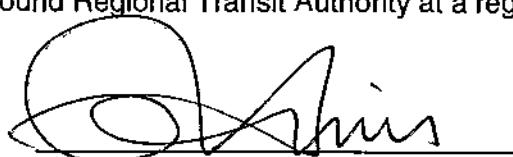
The negotiated vendor contract includes a number of performance security provisions, including:

- requirements that the vendor post letters-of-credit and performance bonds in a total amount of \$8 million;
- timing of vendor payments to coincide with successful completion and acceptance of project milestones;
- provisions to withhold payment in the case of dispute over project performance; and
- insurance and indemnification deemed sufficient to protect the transit partners against unforeseen financial risk.

Motion:

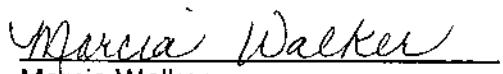
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Executive Director is authorized to execute a contract with ERG Transit Systems (USA) Inc., a California corporation and wholly-owned subsidiary of ERG Limited, an Australian systems integration and transit fare collection equipment vendor, to design, implement and operate a regional Smart Card-based fare collection and revenue processing system for Central Puget Sound transit agencies. This contract would include \$3,279,008 for system design and implementation and all equipment, plus \$2,712,854 in payments for operations and maintenance of the system through 2014, and an 11% contingency amount of \$653,069, for a total authorized contract amount of \$6,644,931.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on April 24, 2003.



Ron Sims
Board Chair

ATTEST:



Marcia Walker
Marcia Walker
Board Administrator